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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/510,924

10/08/2004

Peter James Johnstone

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07/18/2008

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EXAMINER

CHRISS, JENNIFER A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

07/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/510,924

Applicant(s)

JOHNSTONE, PETER JAMES

Examiner

JENNIFER A. CHRISS

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 50 - 53, 55 - 56, 58 - 61, 64 and 68 - 80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 50 - 53, 55 - 56, 58 - 61, 64 and 68 - 80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application on July 3, 2007 after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's Amendments and Accompanying Remarks filed on May 21, 2007 have been entered and carefully considered. Claims 1 – 49, 54, 57, 62 – 62 and 65 – 67 are cancelled and claims 50 – 53, 55 – 56, 58 – 61, 64 and 68 – 80 are pending. In view of Applicant's argument that the applied prior art does not teach Applicant's claimed configuration, the Examiner has withdrawn the rejection as detailed in the Office Action dated March 8, 2007. The invention as currently claimed is not found to be patentable for reasons herein below.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 50 - 53, 55 - 56, 58 - 61, 64 and 68 - 80 are rejected under 35

U.S.C. 102(b) as being anticipated by Nalle, Jr. (US 3,816,959).

Nalle, Jr. is directed to a plastic guard for protecting young trees, plants and flowers (Title).

As to claim 50, 52, 58 - 61, 70 - 76 and 78 - 80, Nalle, Jr. teach a guard comprising a tubular mesh formed by intersecting thermoplastic filaments, the tubular mesh being bonded to an elongated thermoplastic extrudate defining a stake for anchoring the tubular mesh in the ground (Abstract). As shown in Figure 1, the filaments are spirally wrapped in both directions along the length of the tube and the stake is provided along the longitudinal length of the tube. Nalle, Jr. indicate that the filaments are extruded plastic products which can have a ribbon-like cross-section (column 3, lines 35 - 40). The Examiner submits that filaments with a ribbon-like cross-section can be equated to Applicant's "flexible plastic film webs". Figures 2 and 5 show the use of longitudinal filaments.

As to claim 51, 53, 64 and 77, Nalle, Jr. teach that the guard can be radially flattened (column 4, lines 35 - 45) and that the mesh may be cut (column 5, lines 20 - 25).

As to claims 55 - 56, Nalle, Jr. show in Figures 2 and 5 the use of multiple longitudinal elements and, in particular, where some longitudinal filaments and thermoplastic extrudate overlap.

As to claims 68 - 69, Nalle, Jr. show two configurations in the Figures, one

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where the elements are spaced from one another and ones where they overlap with one another (see Figures 1, 3 and 5).

Response to Arguments

5. Applicant's arguments with respect to claims 50 - 53, 55 - 56, 58 - 61, 64 and 68 - 8 have been considered but are moot in view of the new ground of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER A. CHRISS whose telephone number is (571)272-7783. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 6 p.m., first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jennifer A Chriss/
Examiner, Art Unit 1794

/J. A. C./
Examiner, Art Unit 1794